

Mr. HARBINE. I renew the motion, and do hope that the motion to reconsider will prevail. It strikes me as if the article which my friend has moved to reconsider, should never have been inserted in the Constitution. Now, I have gone to the trouble to examine some of the constitutions of the States of this Union, and did not find one in which such a provision has been incorporated; nor do I believe, if you search every state constitution, that you will find one which has in it such a provision as this. And why? Does not every man at once see the simple and plain reason?—that it does not belong to the constitution. It belongs to the legislature or law-making power. Now look at it. What scenes have been exhibited here this morning? Gentlemen learned in the law differed as to the soundness of the principle contained in the provision under discussion. One thinks it will remedy present evils: others say not. Is it not enough, when eminent men differ as to the good or evil effect to result from such doctrine as is contained in the section, to cause the Convention to reject it, when we know that such matters are properly left to the legislature? Let such matters be left, where they are left in other States of the Union, to the legislature, where they have more time to discuss the policy of the measure, and the principles involved. If the law-making power of the state comes to the conclusion that it should be part of the law, let it be so. Then if it is found to operate unjustly, if it is found inequitable, if the principle will not work for the benefit of the people, then that legislature, or some succeeding one, can repeal the law, and it will no longer exist. But put it in this Constitution, and no matter what will be its effect, it must there remain as a part of the organic law, so long as the Constitution exists. I do think, with all due respect to the gentleman who is the mover of this proposition, that it should not have a place in the organic law. It belongs to the law of set off, and if we are to incorporate all the different doctrines belonging to that department of the law—all provisions that may be beneficial, *simply because they are beneficial*—we will have a Constitution as voluminous as Dorsey's Laws of Maryland. If this article is incorporated, a hundred others have the same right to be made a part of the Constitution. To my mind, at least, this is not the proper place, nor is this the proper time. I withdraw the motion to postpone indefinitely.

Mr. SCHLEY. I renew the motion. I entirely concur with the view taken by my colleague, and the house must be forcibly impressed with the view taken by the gentleman from Baltimore city, (Mr. Brent,) that this amendment would operate most injuriously. Take the case as given by the gentleman from Baltimore city. A owes B a debt, but will not pay it. B institutes suit for the recovery of the money. A is a man of means; B is a poor man. A goes out and purchases up various claims against B. When the case comes up for trial, A pleads these set offs, and brings B into debt, and then, according to the theory of the gentleman from Queen Anne's, (Mr. Spencer,) the jury has to render a verdict

against the plaintiff, and makes him pay the costs, whereas, if A had paid the debt when it was due, there would have been no necessity for the suit.

There is another effect to which I wish to call the attention of the Convention, viz: that by this process you would hasten the payment of these accounts on the part of the plaintiff.

This principle, with the modification which the gentleman from Queen Anne's has suggested, that the set-off should be due at the institution of the suit, I would have no objection to having incorporated into the law of Maryland. But if you introduce this provision into the constitution, where will you stop? In my part of the country, it is a favorite idea that the statute of limitation shall not be pleaded, except under oath that the debt had been paid. If the proposition now under consideration be introduced, some gentleman may perhaps introduce that, and the one would be as appropriate in the Constitution as the other, and the same might be affirmed of divers other propositions. Thus your Constitution, as has been said by my friend, would be as large as Dorsey's laws of Maryland, and instead of being the *Constitution of Maryland*, would be the laws of Maryland. I withdraw the motion.

The question was then taken on the motion of Mr. Neill to reconsider the vote on the adoption of the article, and it was decided in the affirmative, by the following vote:

Affirmative—Messrs. Chapman, Pres't, Morgan, Blakistone, Dent, Hopewell, Ricard, Chambers of Kent, Mitchell, Donaldson, Dorsey, Wells, Randall, Kent, Sellman, Brent of Charles, Howard, John Dennis, James U. Dennis, Crisfield, Williams, Hicks, Hodson, Goldsborough, Eccleston, Bowling, Grason, Gaither, Biser, Annan, Brent of Baltimore city, Schley, Fiery, Neill, John Newcomer, Harbine, Anderson, Smith, Parke and Cockey—39.

Negative—Messrs. Lee, Bond, Buchanan, Welch, Lloyd, Dickinson, Dashiell, Chambers of Cecil, McLane, McCubbin, Spencer, Wright, McMaster, Hearn, Fooks, Jacobs, Sappington, McHenry, Magraw, Carter, Thawley, Gwinn, Stewart of Baltimore city, Sherwood of Baltimore city, Michael Newcomer, Brewer, Waters, Weber, Holliday, Slicer, Fitzpatrick, Shower and Brown—33.

So the Convention reconsidered their vote on said 13th article.

The question then recurred on the adoption of the article.

Mr. SPENCER moved to amend said article, by adding at the end thereof the following proviso:

"Provided the account in bar or set off shall be held by the defendant, with notice to the plaintiff at the time of the institution of the action."

Mr. SPENCER asked the yeas and nays on the adoption of his amendment, which were ordered, and being taken, resulted as follows:

Affirmative—Messrs. Lee, Bond, Buchanan, Welch, Lloyd, James U. Dennis, Crisfield, Dashiell, Hicks, Hodson, Eccleston, Chambers, of Cecil, Miller, McLane, McCubbin, Spencer, Wright, Dirickson, McMaster, Hearn, Fooks, Jacobs, Sappington, McHenry, Magraw, Thawley, Stewart, of Baltimore city, Sherwood, of